



Llywodraeth Cymru
Welsh Government

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Welsh Government
Consultation – summary of response

Amendments to Firefighters' Pension Schemes in Wales

Consultation on amendments to firefighters' pension schemes in Wales
2021

March 2022

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

Overview

This document provides a summary of the consultation responses on amendments to firefighters' pension schemes in Wales, including the Welsh Government's response to them.

Action Required

This document is for information only.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

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Additional copies

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation: <https://gov.wales/amendments-firefighters-pension-schemes-wales-2021>

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1. Introduction

The Public Service Pensions Act 2013 (“the 2013 Act”) introduced comprehensive reforms of all public sector pensions in Great Britain. The overall aim was to reduce the cost of such pensions to the public purse, by introducing new schemes with a higher normal pension age (NPA) for all public servants, and providing that benefits in those schemes were to be calculated on the basis of career average revalued earnings (CARE) rather than final salary. The 2013 Act required the UK or (as appropriate) devolved governments to make regulations establishing such new schemes with effect from 1 April 2015, at which point existing schemes (now known as “legacy schemes”) were closed to the majority of members, so that members could no longer accrue any pension in them but those closest to retirement were able to remain in the existing schemes by being granted so-called transitional protection. This approach was found to be unlawful by the Court of Appeal in 2018.

The Public Service Pensions and Judicial Offices Bill (“the Bill”), which was introduced into the House of Lords on 19 July 2021, and seeks to remedy that discrimination by providing those eligible members with a choice of benefits in the legacy or 2015 schemes for the remedy period of 2015-2022. The Bill also closes legacy schemes to further accrual from 1 April 2022.

The overall shape of the remedy and other reforms are matters for the UK Government. The Welsh Ministers are responsible for making and amending the rules of firefighters’ pension schemes in Wales. Whilst the Welsh Ministers have functions in relation to firefighters’ pensions, occupational pensions in general are a reserved matter outside the legislative competence of Senedd Cymru. The Welsh Ministers are thus obliged to make regulations to ensure that the provisions in the Bill are reflected in the regulations for firefighters’ pensions in Wales.

The Welsh Government consultation therefore sought views on whether the draft regulations effectively implement the requirement of the Bill, to close future accrual in the legacy 1992 and 2007 schemes and move all active members into the 2015 Scheme from 1 April 2022.

2. Consultation Process

An eight week consultation began on 25 October 2021 and was open for responses until 20 December 2021. The consultation contained eight questions, with options to respond to those questions by completion of an online form or by e-mail. The consultation document was available on the Welsh Government website.

The consultation, which included the draft SI, specifically focussed on the transfer of fully protected members of legacy schemes, into the 2015 Scheme, on 1 April 2022.

The Welsh Government received eight responses to the consultation. Those eight responses came from the following:-

- Three from Fire and Rescue Authorities in Wales (FRAs)

- Three from other fire-related organisations (representative organisations and trade unions representing FRA staff)
- One from the Firefighters Pension Scheme Advisory Board for Wales¹
- One from an individual

The annex to this document contains a full list of the respondents and their responses, and is available at:

<https://gov.wales/amendments-firefighters-pension-schemes-wales-2021>

The Welsh Government welcomes the responses to the consultation and would like to thank those who responded.

The Welsh Government published its Integrated Impact Assessment alongside the consultation document. The overall policy position set out in the consultation document remains the same and has formed the basis of the final regulations. Therefore no changes have been made to the Integrated Impact Assessment as originally published. The document can be found [here](#).

3. Summary of Consultation Responses

The Welsh Government has considered the responses to the consultation. This document provides a summary of the responses received to each of the specific questions and the Welsh Government's response to them.

Question 1 - How far do you believe the draft regulations reflect the need to transfer protected members into the 2015 Scheme on 1 April next year? Do you think there are any errors or omissions in the draft?

Respondents agreed that the draft regulations reflect the need to transfer protected members into the 2015 Scheme from 1 April 2022 and thus meet the requirements of the remedy to remove unlawful age discrimination.

Respondents did not identify any errors or omissions in the draft regulations but the Fire and Rescue Services Association noted that there could be unintended consequences of introducing such changes, which may not be clear at this stage.

Welsh Government Response:

The Welsh Government acknowledges the general support for the proposal. We note the concern of the FRSA and will consider any unintended consequences if they emerge. Our consultation document indicated that all existing agreements for the purchase of either extra years of pensionable service, or extra pension will remain in force after the transfer into the 2015 scheme. That remains our position

¹ The Firefighters Pension Scheme Advisory Board for Wales has an independent Chair and consists of the three Fire and Rescue Authorities in Wales; the Fire Brigades Union; the Fire Leaders Association; the Fire Officers' Association; and the Fire and Rescue Services Association.

although a small technical amendment will be made to the transitional provisions in Schedule 2 of the 2015 scheme which already make provision for this arrangement.

Question 2 - Do you have any views on the proposals regarding double accrual?

Overall the respondents agreed that the proposals clearly set out the continuation of double accrual for 1992 Scheme members with service after 31 March 2022. However, one respondent highlighted a lack of understanding of the impact the proposals would have on individual members transferring from their legacy schemes into the 2015 scheme depending on their age and length of continued service post transfer.

The Fire and Rescue Services Association suggested that there may be an element of fairness when compared to the 2007 Pension scheme as modified in 2014 for Retained Firefighters which provided an accrual rate of 1/45th, irrespective of the length of service of the individual.

Welsh Government Response:

The Welsh Government, along with the Treasury and other UK Government Departments and devolved administrations, acknowledges the need to provide clear and accurate communications and information to members affected by the transfer from legacy schemes.

We acknowledge that the arrangements for accrual in the modified scheme and the 1992 scheme are different; the former having a uniform accrual rate of 1/45 regardless of length of service and the latter with a lower accrual rate of 1/60 for up to 20 years and then doubling to 1/30 for service between 20 and 30 years. This consultation does not seek to assess the merits of either approaches which were established under legacy schemes rules. Rather it sets out that existing transitional arrangements for weighted accrual, introduced in 2015, will remain in place for members transferring to the 2015 scheme in 2022. These arrangements will preserve the right such that the accrual rate applied to a 1992 Scheme pension will be based on total pensionable service in the 1992 and 2015 Schemes. The effect of this is that a member with 30 years' service will effectively have a 1/45 accrual rate applied to their membership in the 1992 scheme.

We do not believe that the proposals to preserve double accrual for transferring members of the 1992 Scheme creates any unfairness when compared to members of the modified scheme for retained firefighters.

Question 3 - Do you have any views on the proposals regarding ill health retirement? In particular, do you agree that we should draft the regulations to make provision for ill health retirements which straddle the transfer date, and which ensure that people in those circumstances are no worse off than if they retired before that date?

Employer representatives agreed that ill health retirement members which straddle the transfer date should not be placed in a less beneficial position than they would have been in, had their retirement been determined before 31 March 2022. They fully supported the proposal that provision should be made to protect the position of ill health retirement cases that span 31 March 2022.

Generally, employee representatives were supportive of the proposal. However, the Fire Brigades Union and the Fire Officers' Association felt that eligibility for ill health retirement needed to be defined and suggested a broader approach for processing ill health retirement cases, under which the ill health retirement process would be taken to have started when the member concerned, suffered the injury or condition which led to their retirement. This issue had also been raised as part of the response from the Firefighters Scheme Advisory Board for Wales.

Welsh Government Response:

The Welsh Government's primary aim, as set out in the consultation document, is to protect the position of ill health retirees, whose cases were pending on 31 March 2022, so that nobody will be worse off as a result of an ill-health retirement decision being made post transfer than they would have been if they had retired on an ill-health pension on 31 March 2022. That aim has not changed.

The consultation proposed that this would be achieved by making provision for an "underpin" so that a member's assessment of award be conducted using the ill health criteria for both the legacy scheme and the 2015 scheme and, should the member be eligible under both schemes, a 'top up' payment would be provided to cover the difference in amounts.

No issues were raised with the proposed underpin mechanism referred to in the consultation responses received and the regulations will therefore include this mechanism for 1992 scheme members. No such provision is necessary for members transferring from the 2007 scheme because their ill health benefits will always be at least as generous under the 2015 Scheme.

We acknowledge respondents' suggestion for a provision to the effect that the date of the injury or illness, leading to ill health retirement, should be determinative; and that if this occurred before 31 March 2022, then the ill health underpin should apply.

The Welsh Government has considered this view carefully but, on balance, believes it goes beyond the policy aim which is to protect members who are already in the ill-health process. We also believe that such a position could risk causing confusion

and unfairness given that the date on which a member suffered the injury or condition which ultimately led to their retirement may not always be clear.

The existing transitional provisions in the 2015 scheme limits entitlement to legacy scheme ill health pensions only to those cases where the employer had decided to obtain the opinion of an IQMP before the transfer date. No objection was made to those arrangements when we consulted on them in 2018, and we are not aware of any cases of apparent unfairness which arose as a result.

The regulations will take the same approach as applied previously. Eligibility for the provision that will change the age criteria for those transitioning from the 1992 scheme will be limited to those in respect of whom the employer had decided to obtain an IQMP opinion on or before 31 March 2022. It would be normal for an employer to inform the member that such a decision had been made.

Question 4 - Do you envisage any difficulties or obstacles in implementing the transfer which the regulations provide for?

Employer representatives confirmed that they were able to identify protected scheme members who would be employed by them on 31 March 2022, and successfully transfer them to the 2015 Scheme from 1 April 2022.

Employee representatives were content that the draft regulations achieved the intended outcome.

Welsh Government Response:

The Welsh Government notes that no difficulties with implementation have been identified by respondents.

Question 5 - We are interested in understanding whether the proposals in this consultation document will have an impact on people with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation. Do you think that the proposals in this consultation will have any positive or negative impacts on people with protected characteristics? If so, which and why/why not?

Employer representatives had not identified any further issues that would negatively impact on members with protected characteristics.

One individual believed that transferring the 200 firefighters affected, amounted to age discrimination.

Responses from employee representatives expressed concern about the ability of firefighters, particularly female firefighters, to work to a normal pension age of 60 given the high fitness standards in the 2015 Scheme. Specific reference was made

to the lack of evidence currently available to assess the effect of the menopause on the ability to perform the physical duties of the role beyond 55.

The Fire Officers Association raised a further age related concern in relation to access to retirement benefits. It was suggested that the ability to access benefits from 1 April 2022 varied according to age at the time of transfer. Members under the age of 55 on 1 April 2022 would be unable to access any 2015 scheme benefits accrued pre-transfer until they reach that age, whereas fully protected 1992 Scheme members would be aged 55 or over at the point of transfer and, consequentially, in a position to access benefits from the 2015 at any time from the point of joining the Scheme.

Welsh Government Response:

We understand the views which respondents have on these matters. However, the closure of legacy schemes and the 2015 Scheme's normal pension age of 60 are mandated in non-devolved primary legislation (the current Bill and the Public Service Pensions Act 2013, respectively). Therefore, and as we noted in the consultation document, the Welsh Government cannot take any action to address these concerns.

We also note that the proposals are part of a package of reform which removes the discrimination that arose between older members who were subject to transitional protection and younger members who were not. The proposals will ensure that all members are treated on a fair and equal basis regardless of their age.

Members are of course able to access their legacy scheme pension as soon as they reach legacy scheme normal pension age. It is also worth noting that the Welsh Government introduced significantly more generous early retirement factors for the 2015 scheme when it was introduced.

Question 6 - We would like to know your views on the effects that the above proposals would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Respondents considered that the proposals contained within the draft Regulations would have neither a positive or negative impact on the Welsh language.

Welsh Government Response:

The Welsh Government notes respondents' views on this issue.

Question 7 - Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no

adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comments were made.

Welsh Government Response:

There are no issues to be addressed.

Question 8 - Do you have any other views about these proposals (recognising that the underlying policy and law are not devolved, and not matters for the Welsh Government)?

The Fire Officers' Association suggested that there should be consistency across the UK, where possible, to aid transfers between fire and rescue services and to provide a consistent position across scheme administrators. This view was shared by the Scheme Advisory Board for Wales.

The Fire Officers' Association proposed further amendments to improve the 2015 Firefighters' Pension Scheme in respect of the Ill-Health Award (to provide for the correction of independent qualified medical practitioner (IQMP) opinions, which may later transpire to be inaccurate, and to provide flexibility when predicting a person's long-term capability to work, including an increase to the level of ill-health pension awarded. The Fire Officers' Association added that consideration also be given to *Flexible Contributions* (to provide provision to reduce contributions and benefits, making the scheme more accessible to lower paid members).

No further comments were made by respondents.

Welsh Government Response:

We note respondents indicated that they welcomed a consistent approach when remedying the discrimination and implementing the necessary changes to the Fire schemes in Wales. The Treasury is responsible for setting the broad policy direction on retrospective and prospective remedy in primary legislation. The Welsh Government is responsible for setting out the detailed application of the primary legislation into scheme specific rules through secondary legislation. We are working with the Treasury, along with other UK Government Departments and devolved governments, to understand the policy and proposed legislation in order to develop the draft regulations and to deliver a consistent approach across the public sector, insofar as possible.

We note the view of the Fire Officers' Association that it may be timely to consider further amendments required to the 2015 Scheme, to improve the effectiveness and management of the scheme. This view relates to matters that are outside the specific scope of this consultation, and taking action on these matters would require further consultation with all interested parties. However, the Welsh Government notes the issues raised and will consider these separately and in more detail in due course.